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UNITED STATES DISTRICT COURT  
 DISTRICT OF ARIZONA

ThermoLife International, LLC,

No. CV 11-01056-PHX-NVW

Plaintiff/Counterdefendant,

**ANSWER TO PLAINTIFF'S FIRST  
 AMENDED COMPLAINT AND  
 FIRST AMENDED  
 COUNTERCLAIM**

v.

Gaspari Nutrition, Inc.,

Defendant/Counterclaimant.

Defendant/Counterclaimant, Gaspari Nutrition, Inc. (“GNI”), by and through its undersigned counsel, for its answer to Plaintiff/Counterdefendant’s First Amended Complaint (“FAC”), admit, deny, and allege as follows:

1. Denies every allegation of the FAC, except as hereinafter expressly admitted.

**NATURE OF ACTION**

2. Answering paragraph 1 of the FAC, admits that Plaintiff has brought claims, states that the FAC is a document that speaks for itself, and denies any characterization as to the content or effect of that document that is inconsistent with the document itself. Further answering paragraph 1 of the FAC, denies that ThermoLife

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brings its claims in good faith, nor for the reasons stated in that paragraph. Further answering paragraph 1, states that GNI's advertisements and the FDA's conclusions are items that speak for themselves and denies any characterization as to the content or effect of those items which are inconsistent with the items themselves. Finally, Defendant denies the remaining allegations in the paragraph and denies it is liable to Plaintiff on any basis.

3. Denies the allegations of paragraph 2 of the FAC.

4. Answering paragraph 3 of the FAC, admits that competition in the supplement industry is fierce, is without knowledge or information sufficient to admit or deny the research and development goals of each company in the industry nor the methods (legal or illegal) that are employed by each company, states that compliance or non-compliance with the Dietary Supplement Health and Education Act of 1994 (“DSHEA”) is a legal determination, and not subject to admission or denial in answering a complaint, denies the remaining allegations in the paragraph, and denies it is liable to Plaintiff on any basis.

5. Denies the allegations of paragraph 4 of the FAC.

6. Answering the allegations of paragraph 5 of the FAC, denies that GNI has falsely advertised its products, denies that it has taken actions motivated solely by ill-will and spite to injure ThermoLife, denies GNI has routinely disparaged ThermoLife nor Mr. Kramer, is without knowledge or information sufficient to admit nor deny whether Mr. Kramer is a major consumer of dietary supplements (but suspects he probably is), denies all other allegations in the paragraph, and denies it is liable to Plaintiff on any basis.

7. Denies the allegations of paragraph 6 of the FAC, including Plaintiff's stated motivation for bringing the suit.

## **PARTIES, JURISDICTION, AND VENUE**

8. Admits the allegations of paragraphs 7, 8, 9, 10, 11, and 12 of the FAC.

9. Answering paragraph 13 of the FAC, admits that venue is proper, denies that events or omissions occurred that give rise to any of ThermoLife's claims, and

1 denies it is liable to Plaintiff on any basis.

2 **FACTUAL ALLEGATIONS**

3 10. Answering paragraphs 14, 15, 16, 17, and 18 of the FAC, is without  
4 knowledge or information sufficient to respond to this paragraph, and denies it is liable to  
5 Plaintiff on any basis.

6 11. Answering paragraph 19 of the FAC, is without knowledge or  
7 information sufficient to respond to the vague statements in the paragraph regarding the  
8 industry and unnamed “supplement companies”, denies that Thermolife develops unique  
9 products and formulas, denies ThermoLife fully discloses to the public, denies all other  
10 allegations in the paragraph, and denies it is liable to Plaintiff on any basis.

11 12. Answering paragraph 20 of the FAC, is without knowledge or  
12 information sufficient to respond to ThermoLife’s representations about its intellectual  
13 property, notes that the effect of patents is a legal determination, and not subject to  
14 admission or denial response to a complaint, and therefore denies same, denies all other  
15 allegations in the paragraph, and denies it is liable to Plaintiff on any basis.

16 13. Answering paragraph 21 of the FAC, denies that ThermoLife has  
17 taken a lead role in anything other than blatant self-promotion, denies all other allegations  
18 in the paragraph, and denies it is liable to Plaintiff on any basis.

19 14. Denies the allegations of paragraph 22 of the FAC.

20 15. Answering paragraph 23 of the FAC, admits that Mr. Kramer calls  
21 himself “Truth Speaker,” states that Mr. Kramer is known by other names and nicknames  
22 on the Internet, and denies it is liable to Plaintiff on any basis.

23 16. Admits the allegations of paragraph 24 of the FAC.

24 17. Answering paragraph 25 of the FAC, admits that the FDA regulates  
25 dietary supplements under DSHEA, is without knowledge or information sufficient to  
26 admit nor deny whether ThermoLife’s supplements are DSHEA-compliant.

27 18. Answering paragraph 26 of the FAC, states that 25 U.S.C. § 350(b) is  
28 a statute that speaks for itself, denies any characterization as to the content or effect of that  
statute which is inconsistent with the statute itself, denies all other allegations in the  
paragraph, and denies it is liable to Plaintiff on any basis.

1           19. Answering paragraph 27 of the FAC, states that it is without  
2 knowledge or information sufficient to determine the extent to which the FDA reviews  
3 each and every dietary supplement before it is sold nor to determine what each and every  
4 person who sells or markets dietary supplements is required to do.

5           20. Admits the allegations of paragraph 28 of the FAC.

6           21. Admits the allegations of paragraphs 29 and 30 of the FAC.

7           22. Answering paragraph 31 of the FAC, admits that GNI employees are  
8 frequent contributors to the BodyBuilding.com internet message board and forums, upon  
9 information and belief, states that some consumers of GNI and ThermoLife rely on the  
10 message boards and forums and visit the boards in order to research dietary supplements,  
11 denies all other allegations in the paragraph, and denies it is liable to Plaintiffs on any  
basis.

12           23. Admits the allegations of paragraph 32 of the FAC.

13           24. Denies the allegations of paragraph 33 of the FAC.

14           25. Answering paragraph 34 of the FAC, states that the Washington Post  
15 article is an article that speaks for itself, denies any characterization of the article which is  
16 inconsistent with the article itself, reserves all rights to challenge both the authenticity and  
17 accuracy of the article attached to the FAC as Exhibit 1, denies all other allegations in the  
18 paragraph, and denies it is liable to Plaintiff on any basis.

19           26. Answering paragraph 35 of the FAC, states that the Article entitled  
20 “Steroids” is an article that speaks for itself, denies any characterization of the article  
21 which is inconsistent with the article itself, reserves all rights to challenge both the  
22 authenticity and accuracy of the article attached to the FAC as Exhibit 1, denies all other  
23 allegations in the paragraph, and denies it is liable to Plaintiff on any basis.

24           27. Denies the allegations of paragraph 36 of the FAC.

25           28. Admits the allegations of paragraph 37 of the FAC.

26           29. Answering the allegations of paragraph 38 of the FAC, admits that  
27 GNI marketed Novadex XT as a dietary supplement, states Plaintiff’s interpretation of  
28 what certifying DSHEA-compliance is a legal determination, not subject to admission nor  
denial in a complaint, and therefore denies same, denies all other allegations in the

1 paragraph, and denies it is liable to Plaintiff on any basis.

2 30. Answering paragraph 39 of the FAC, admits Novedex XT contains  
3 an aromase inhibitor, admits Novadex XT was marketed as a testosterone booster and  
4 affirmatively states Novadex XT was primarily marketed as an anti-estrogen/anti-  
5 aromatase product to minimize the production of any and all estrogens in the body, denies  
6 all other allegations in the paragraph, and denies it is liable to Plaintiff on any basis.

7 31. Answering paragraph 40 of the FAC, denies Plaintiff's allegation  
8 "ATD is not naturally occurring and part of the food supply," is without knowledge or  
9 information sufficient to form a belief concerning the when ATD was sold as a dietary  
10 supplement, and therefore denies same.

11 32. Answering paragraphs 41, 42, 43, 44, 45, and 46 of the FAC, states  
12 that the FDA formal action is a document that speaks for itself, denies any  
13 characterization of the action which is inconsistent with the action itself, reserves all rights  
14 to challenge both the authenticity and accuracy of the action attached to the FAC as  
15 Exhibit 2, affirmatively states that GNI elected to not challenge the FDA's formal action,  
16 denies all other allegation in the paragraphs, and denies it is liable to Plaintiff on any  
basis.

17 33. Further answering paragraphs 45 and 46 of the FAC, states that the  
18 allegations contained in those paragraphs are legal conclusions, not subject to admission  
19 or denial in a complaint, and therefore, denies same.

20 34. Answering paragraph 47, admits that GNI stated that Novedex XT  
21 was DSHEA-compliant, admits that GNI stated that materials in Novedex XT are  
22 naturally occurring, admits that GNI represented Novedex XT is safe, denies all other  
23 allegations in the paragraph, and denies it is liable to Plaintiff on any basis.

24 35. Answering paragraph 48 of the FAC, states that the FDA's findings  
25 speak for themselves, denies any characterization of the FDA's findings which are  
26 inconsistent with the findings themselves, affirmatively states that GNI elected to not  
27 challenge the FDA's formal action, denies that Novedex XT has several potentially  
28 serious side effects, denies all other allegations in the paragraph, and denies it is liable to  
Plaintiff on any basis.

1           36. Answering paragraph 49 of the FAC, states that the Press Release is a  
2 document that speaks for itself, denies any characterization of the document which is  
3 inconsistent with the document itself, denies all other allegations in the paragraph, and  
4 denies it is liable to Plaintiff on any basis.

5           37. Answering paragraph 50 of the FAC, admits that GNI announced a  
6 recall on October 7, 2010, denies all other allegations in the paragraph, and denies it is  
7 liable to Plaintiff on any basis.

8           38. Admits the allegations of paragraph 51 of the FAC.

9           39. Answering paragraph 52 of the FAC, states that the advertisement is  
10 a document that speaks for itself, denies any characterization of the document which is  
11 inconsistent with the document itself, denies any allegation that calls into question the  
12 safety of GNI's products, denies all other allegations in the paragraph, and denies it is  
13 liable to Plaintiff on any basis.

14           40. Answering paragraph 53 of the FAC, states that any Internet  
15 advertising conducted in relation to Novedex XT speaks for itself, denies any  
16 characterization of advertisement which is inconsistent with the advertisement itself,  
17 denies all other allegations in the paragraph, and denies it is liable to Plaintiff on any  
18 basis.

19           41. Answering paragraph 54 of the FAC, states that the Novedex XT  
20 label is a document which speaks for itself, denies any characterization of the label which  
21 is inconsistent with the label itself, denies all other allegations in the paragraph, and  
22 denies it is liable to Plaintiff on any basis.

23           42. Answering paragraph 55 of the FAC, states that the advertisement is  
24 a document that speaks for itself, denies any characterization of the document which is  
25 inconsistent with the document itself, denies all other allegations in the paragraph, and  
26 denies it is liable to Plaintiff on any basis.

27           43. Answering paragraph 56 of the FAC, states that the advertisement is  
28 a document that speaks for itself, denies any characterization of the document which is  
29 inconsistent with the document itself, denies all other allegations in the paragraph, and  
30 denies it is liable to Plaintiff on any basis.

1           44. Answering paragraph 57 of the FAC, admits that GNI provided  
2 advertisements to third parties who sold Novedex XT through their websites, admits GNI  
3 no longer advertises Novedex XT, states that it is without knowledge or information  
4 sufficient to form a belief as to what unnamed “third party internet websites” include on  
5 their website or where they obtained their advertisements and therefore denies same,  
6 denies all other allegations in the paragraph, and denies it is liable to Plaintiff on any  
7 basis.

8           45. Answering paragraph 58 of the FAC, states it is without knowledge  
9 or information sufficient to form a belief as to what American Lifestyle advertised and  
10 sold and therefore denies same, states that the advertisement is a document that speaks for  
11 itself, denies any characterization of the advertisement which is inconsistent with the  
12 advertisement itself, denies all other allegation in the paragraphs, and denies it is liable to  
13 Plaintiff on any basis.

14           46. Answering paragraphs 59, 60, and 61 of the FAC, states that the  
15 advertisement is a document that speaks for itself, denies any characterization of the  
16 advertisement which is inconsistent with the advertisement itself, denies any and all  
17 allegations that any advertising created by GNI is “false” or “misleading to consumers,”  
18 denies all other allegations in the paragraph, and denies it is liable to Plaintiff on any  
19 basis.

20           47. Answering paragraph 62 of the FAC, states it is without knowledge  
21 or information sufficient to form a belief as to what Astro Nutrition advertised and sold  
22 and therefore denies same, states that the advertisement is a document that speaks for  
23 itself, denies any characterization of the advertisement which is inconsistent with the  
24 advertisement itself, denies all other allegation in the paragraphs, and denies it is liable to  
25 Plaintiff on any basis.

26           48. Answering paragraph 63 of the FAC, state that the allegations in this  
27 paragraph fail to cite any specific statements with any specificity, making it impossible for  
28 Defendant to respond with any specificity, and therefore, denies same. To the extent that  
statements were made concerning Novedex XT, those statements speak for themselves,  
Defendant denies any characterization of the statements which are inconsistent with the

1 statements themselves, denies all other allegations in the paragraph, and denies it is liable  
2 to Plaintiff on any basis.

3           49. Answering paragraph 64 of the FAC, admits that Daniel Pierce uses  
4 the screen name “deserusan”, states that the posting on healthknowledge.com is a posting  
5 that speaks for itself, denies any characterization of the posting that is inconsistent with  
6 the posting itself, denies any and all allegations that any statements by Mr. Pierce are  
7 “false and/or misleading to consumers,” denies all other allegations in the paragraph, and  
8 denies it is liable to Plaintiff on any basis.

9           50. Answering paragraph 65 of the FAC, denies that Pierce posted to  
10 BodyBuliding.com, and therefore, denies all allegations in the paragraph, and denies it is  
11 liable to Plaintiff on any basis.

12           51. Answering paragraph 66 of the FAC, states that the posting on  
13 BodyBuilding.com is a posting that speaks for itself, denies any characterization of the  
14 posting that is inconsistent with the posting itself, denies any and all allegations that any  
15 statements by Mr. Pierce are “false and/or misleading to consumers,” denies all other  
16 allegations in the paragraph, and denies it is liable to Plaintiff on any basis.

17           52. Answering paragraph 67 of the FAC, states that the posting on  
18 BodyBuilding.com is a posting that speaks for itself, denies any characterization of the  
19 posting that is inconsistent with the posting itself, denies any and all allegations that any  
20 statements by Mr. Pierce are “false and/or misleading to consumers,” denies all other  
21 allegations in the paragraph, and denies it is liable to Plaintiff on any basis.

22           53. Answering paragraph 68 of the FAC, denies that Bruce Kneller is  
23 currently GNI’s formulator, admits that Mr. Kneller has gone by the internet screen name  
24 “Kohen Gadol”, admits that he has posted on BodyBuilding.com, states that the posting  
25 on BodyBuilding.com is a posting that speaks for itself, denies any characterization of the  
26 posting that is inconsistent with the posting itself, denies any and all allegations that any  
27 statements by Mr. Kneller are “false and/or misleading to consumers,” denies all other  
28 allegations in the paragraph, and denies it is liable to Plaintiff on any basis.

29           54. Answering paragraph 69 of the FAC, denies that GNI representatives  
30 have made false statements as to the DSHEA-compliance of GNI’s products, states that

1 the posting on BodyBuilding.com is a posting that speaks for itself, denies any  
2 characterization of the posting that is inconsistent with the posting itself, denies any and  
3 all allegations that any statements by "Zachattack43" are "false and/or misleading to  
4 consumers," denies all other allegations in the paragraph, and denies it is liable to Plaintiff  
5 on any basis.

6 55. Answering paragraph 70 of the FAC, states that the posting on  
7 BodyBuilding.com is a posting that speaks for itself, denies any characterization of the  
8 posting that is inconsistent with the posting itself, denies any and all allegations that any  
9 statements by user98511001541 are "false and/or misleading to consumers," denies all  
10 other allegations in the paragraph, and denies it is liable to Plaintiff on any basis.

11 56. Answering paragraph 71 of the FAC, states that the posting on  
12 BodyBuilding.com is a posting that speaks for itself, denies any characterization of the  
13 posting that is inconsistent with the posting itself, denies any and all allegations that any  
14 statements by "Iceman" are "false and/or misleading to consumers," denies all other  
15 allegations in the paragraph, and denies it is liable to Plaintiff on any basis.

16 57. Answering paragraph 72 of the FAC, denies that GNI made any false  
17 statements regarding DSHEA-compliance, denies all other allegations in the paragraph,  
18 and denies it is liable to Plaintiff on any basis.

19 58. Answering paragraph 73 of the FAC, admits that Novedex XT was  
20 sold at GNC and The Vitamin Shoppe, affirmatively states Defendant's products are legal  
21 dietary supplements, denies all other allegations in the paragraph, and denies it is liable to  
22 Plaintiff on any basis.

23 59. Answering paragraph 74 of the FAC, denies that Plaintiff's products  
24 effectively compete with Defendant's, admits that GNI's products are sold and marketed  
25 to competitive and amateur bodybuilders, is without knowledge or information sufficient  
26 to format a belief as to whether Plaintiff's products are sold and marketed through the  
27 same channels, denies all other allegations in the paragraph, and denies it is liable to  
28 Plaintiff on any basis.

29 60. Answering paragraph 75 of the FAC, admits that Novedex XT has  
30 been marketed as a testosterone booster, affirmatively states Novadex XT is primarily

1 marketed as an anti-estrogen/anti-aromatase product which minimizes the production of  
 2 any and all estrogens in the body, is without knowledge or information sufficient to form a  
 3 belief as to the nature of T-BOL and its testosterone boosting properties, and therefore  
 4 denies same, is without knowledge or information sufficient to form a belief as to whether  
 5 the products were sold and marketed on the same websites and in the same stores and  
 6 therefore denies same, denies all other allegations in the paragraph, and denies it is liable  
 7 to Plaintiff on any basis.

8       61. Denies the allegations of paragraph 76 of the FAC.

9       62. Admits the allegations of paragraph 77 and 78 of the FAC.

10       63. Denies the allegations of paragraph 79 of the FAC.

11       64. Admits the allegations of paragraph 80 of the FAC.

12       65. Answering paragraph 81 of the FAC, admits that Mr. Gaspari  
 13 released a statement, states that the statement speaks for itself, denies any characterization  
 14 of the statement which is inconsistent with the statement itself, denies any and all  
 15 allegations that any statements by Mr. Gaspari are false, denies all other allegations in the  
 paragraph, and denies it is liable to Plaintiff on any basis.

16       66. Answering paragraph 82 of the FAC, states that the posting on  
 17 BodyBuilding.com is a posting that speaks for itself, denies any characterization of the  
 18 posting that is inconsistent with the posting itself, denies any and all allegations that any  
 19 statements by “Iceman” are “false and/or misleading to consumers,” denies all other  
 20 allegations in the paragraph, and denies it is liable to Plaintiff on any basis.

21       67. Answering paragraph 83 of the FAC, denies any and all allegations  
 22 that it made false statements, denies all other allegations in the paragraph, and denies it is  
 23 liable to Plaintiff on any basis.

24       68. Answering paragraph 84 of the FAC, admits that Halodrol Liquigels  
 25 and Halodrol MT were sold at GNC and The Vitamin Shoppe, affirmatively states  
 26 Defendant’s products are legal dietary supplements, denies all other allegations in the  
 paragraph, and denies it is liable to Plaintiff on any basis.

27       69. Denies the allegations of paragraph 85 of the FAC.

28       70. Answering paragraphs 86 and 87 of the FAC, states that the formal

1 enforcement report issued by the FDA is a document that speaks for itself, denies any  
 2 characterization of the report which is inconsistent with the report itself, denies all other  
 3 allegations in the paragraphs, and denies it is liable to Plaintiff on any basis.

4       71. Answering paragraph 88 of the FAC, admits that MuscleMaster.com  
 5 conducted a voluntary recall of Halodrol Liquigels, states that the recall notice is a  
 6 document that speaks for itself, denies any characterization of the recall notice which is  
 7 inconsistent with the recall notice itself, denies all other allegations in the paragraph, and  
 8 denies it is liable to Plaintiff on any basis.

9       72. Answering paragraph 89 of the FAC, denies that Plaintiff's products  
 10 effectively compete with Defendant's, admits that GNI's products are sold and marketed  
 11 to competitive and amateur bodybuilders, is without knowledge or information sufficient  
 12 to form a belief as to whether Plaintiff's products are all sold and marketed to competitive  
 13 and amateur bodybuilders or through the same channels and therefore denies same, denies  
 14 all other allegations in the paragraph, and denies it is liable to Plaintiff on any basis.

15       73. Answering paragraph 90 of the FAC, admits that Halodrol Liquigels  
 16 and Halodrol MT are testosterone boosters, affirmatively states Novadex XT is primarily  
 17 marketed as an anti-estrogen/anti-aromatase product which minimizes the production of  
 18 any and all estrogens in the body, is without knowledge or information sufficient to form a  
 19 belief as to whether T-BOL is a testosterone booster, DSHEA-compliant, or sold and  
 20 marketed on the same websites and in the same stores and therefore denies same.

21       74. Denies the allegations of paragraph 91 of the FAC.

22       75. Answering paragraph 92 of the FAC, admits that GNI advertised and  
 23 labeled Halodrol Liquigels and Halodrol MT as including 95% 3,4  
 24 divanillytetrahydrofuran, denies all other allegations in the paragraph, and denies it is  
 25 liable to Plaintiff on any basis.

26       76. Answering paragraphs 93, 94, 95, 96, 97, and 98 of the FAC, is  
 27 without knowledge or information sufficient to form a belief as to the allegations in the  
 28 paragraph, and therefore, denies same.

29       77. Answering paragraph 99 of the FAC, admits that ThermoLife  
 30 published information on the Internet, denies that the publication of information was for

1 the purpose of promoting awareness, affirmatively asserts that the purpose of  
 2 ThermoLife's publication of information was blatant self-promotion, denies all other  
 3 allegations in the paragraph, and denies it is liable to Plaintiff on any basis.

4       78. Answering paragraph 100 of the FAC, admits that GNI was aware  
 5 that ThermoLife published information on the Internet concerning ChromaDex's testing,  
 6 states that the information produced by ChromaDex speaks for itself, denies any  
 7 characterization of the information which is inconsistent with the information itself,  
 8 reserves all rights to challenge the authenticity, accuracy, and relevance of the information  
 9 presented by Plaintiff in relation to the ChromaDex information, denies all other  
 10 allegations in the paragraph, and denies it is liable to Plaintiff on any basis.

11       79. Answering paragraph 101 of the FAC, admits that GNI sold and  
 12 advertised its Halodrol Liquigels and Halodrol MT products, state that those  
 13 advertisements speak for themselves, denies any characterization of those advertisements  
 14 which are inconsistent with the advertisements themselves, denies all other allegations in  
 15 the paragraph, and denies it is liable to Plaintiff on any basis.

16       80. Denies the allegations of paragraph 102 of the FAC.

17       81. Admits the allegations of paragraph 103 of the FAC.

18       82. Answering paragraph 104 of the FAC, states that the label for  
 19 SuperPump 250 speaks for itself, denies any characterization of the label which is  
 20 inconsistent with the label itself, denies all other allegations in the paragraph, and denies it  
 21 is liable to Plaintiff on any basis.

22       83. Answering paragraph 105 of the FAC, states that advertising for  
 23 SuperPump 250 speaks for itself, denies any characterization of the advertising which is  
 24 inconsistent with the advertising itself, denies all other allegations in the paragraph, and  
 25 denies it is liable to Plaintiff on any basis.

26       84. Denies the allegations of paragraph 106 of the FAC.

27       85. Answering paragraphs 107, 108, and 109 of the FAC, states it is  
 28 without knowledge or information sufficient to form a belief as to the allegations in the  
 29 paragraph, and therefore, denies same.

30       86. Answering paragraph 110 of the FAC, states it is without knowledge

1 or information sufficient to form a belief as to the allegations concerning what is or is not  
 2 surprising to Plaintiff and therefore denies same, denies that ThermoLife is a market  
 3 leader in anything, let alone in the sales of Turkesterone, is without knowledge or  
 4 information sufficient to form a belief as to whether ThermoLife has an exclusive  
 5 distributor agreement or whether only one company is known to produce a useable  
 6 amount of Turkesterone for use in dietary supplements and therefore denies same, denies  
 7 all other allegations in the paragraph, and denies it is liable to Plaintiff on any basis.

8 87. Answering paragraph 111 of the FAC, states it is without knowledge  
 9 or information sufficient to form a belief as to the allegations in this paragraph, and  
 10 therefore, denies same.

11 88. Answering paragraph 112 of the FAC, admits that GNI posted on the  
 12 BodyBuilding.com board, states that the posting is a document that speaks for itself,  
 13 denies any characterization of the posting inconsistent with the posting itself, denies all  
 14 other allegations in the paragraph, and denies it is liable to Plaintiff on any basis.

15 89. Denies the allegations of paragraph 113 of the FAC.

16 90. Admits the allegations of paragraph 114 of the FAC.

17 91. Answering paragraph 115 of the FAC, states that it has not broken a  
 18 grain of salt into 100 pieces, so is without knowledge or information sufficient to form a  
 19 belief as to the allegations in this paragraph and therefore denies same, denies all other  
 20 allegations in the paragraph, and denies it is liable to Plaintiff on any basis.

21 92. Answering paragraph 116 of the FAC, disputes the characterization  
 22 of GNI's statement as a "concession" and denies any statement made by GNI relevant to  
 23 this matter conflicts with GNI's advertising. Furthermore, Defendant states that the  
 24 marketing video is a video that speaks for itself, denies any characterization of the video  
 25 that is inconsistent with the video itself, is without information or belief whether the video  
 26 was uploaded on or around October 9, 2010, denies all other allegations in the paragraph,  
 27 and denies it is liable to Plaintiff on any basis.

28 93. Denies the allegations of paragraphs 117, 118, 119, and 120 of the  
 29 FAC.

30 94. Denies the allegations of paragraph 121 of the FAC.

1           95.   Admits the allegations of paragraphs 122 and 123 of the FAC.

2           96.   Answering paragraph 124 of the FAC, notes that claims concerning  
3 ThermoLife's supposed anticipated sales at the Mr. Olympia have been dismissed by the  
4 Court on May 16, 2012 (Court Document No. 46), and therefore, Defendant need not  
5 respond to this paragraph.

6           97.   Admit the allegations of paragraph 125 of the FAC.

7           98.   Answering paragraph 126 of the FAC, states that it is without  
8 knowledge or information sufficient to form a belief as to the extent of ThermoLife's  
9 efforts to secure attendance at the Mr. Olympia event, and therefore denies same.

10          99.   Answering paragraph 127 of the FAC, admits that GNI contacted  
11 American Media, Inc., denies this was motivated by ill-will and spite, affirmatively states  
12 that the founder of ThermoLife, Ron Kramer, regularly threatens people with serious  
13 bodily injury and death, including employees and agents of GNI and is a convicted felon  
14 with an extensive criminal history including investigations, charges, and convictions for  
15 violent offenses, drug offenses, and alcohol offenses. Specifically, upon information and  
belief:

- 16           ■ Mr. Kramer was charged with fifteen felony counts of  
17           possession/trafficking in anabolic steroids or on around September 4,  
18           1997. He pled to two felony violations of California Health and  
19           Safety Code Section 11379 (import/transport/sale of a controlled  
20           substance).
- 21           ■ Mr. Kramer was charged with possession of anabolic steroids, while  
22           on probation for the above-listed felony conviction, on or around  
23           May 11, 2001.
- 24           ■ Mr. Kramer was charged with sexual abuse and witness intimidation  
25           in Santa Cruz County, California.
- 26           ■ Mr. Kramer was charged with aggravated assault in Scottsdale,  
27           Arizona, on or about May 30, 2004. He was accused of holding a  
28           knife to the victim's throat. He plead guilty to a count of  
                  endangerment on or around May 22, 2006.

- 1 ▪ Mr. Kramer was charged with a DUI in Scottsdale, Arizona on or
- 2 around August 7, 200. He plead guilty to DUI on December 2, 2008.
- 3 ▪ Mr. Kramer was charged with possession of marijuana and drug
- 4 paraphernalia in Tempe, Arizona on or around October 22, 2008. He
- 5 plead guilty to possession of marijuana.
- 6 ▪ Mr. Kramer was charged with aggravated DUI for driving under the
- 7 influence in combination with failing to have an Interlock Ignition
- 8 Device installed in Scottsdale, Arizona on or around October 28,
- 9 2010. He was convicted of Aggravated DUI on or around March 1,
- 10 2012.
- 11 ▪ Mr. Kramer was investigated for allegedly making death threats on or
- 12 around March 27, 2005. Mr. Kramer allegedly showed up as an
- 13 uninvited guest to a private party at 3:25AM, asked for alcohol and
- 14 drugs, and then harassed a female inside the establishment. Mr.
- 15 Kramer reportedly threatened to kill a security guard when the
- 16 security guard asked Mr. Kramer to leave.
- 17 ▪ Mr. Kramer was investigated for using fictitious license plates on or
- 18 around April 11, 2005. Mr. Kramer was investigated by the Chandler
- 19 Police Department for attaching a fictitious license plate onto a
- 20 Cadillac Escalade owned by Mr. Kramer. The investigation revealed
- 21 that Mr. Kramer removed a California license plate from a previously
- 22 owned vehicle that Mr. Kramer reported stolen, and placed this
- 23 California license plate on a Cadillac Escalade owned by Mr.
- 24 Kramer.
- 25 ▪ Mr. Kramer was investigated for public disturbance/disorderly
- 26 conduct on or around February 17, 2006. The Chandler Police
- 27 Department investigated a public disturbance call at a Sprint PCS
- 28 retail store. The investigation revealed that Mr. Kramer allegedly
- came to the store after closing and repeatedly banged on the store
- windows, after which the store manager contacted the police and

1 requested that he and a female employee be escorted out of the store.

2

- 3 ▪ On or around April 9, 2007, Mr. Kramer allegedly went to the home  
4 of an electrical contractor with whom he had a dispute while  
5 accompanied by another person and threatened the contractor.  
6 Fearing for his safety, the contractor is alleged to have armed himself  
7 with a firearm at which point Mr. Kramer and his companion left the  
8 residence.
- 9 ▪ Mr. Kramer was investigated in relation to a domestic dispute on or  
10 around April 16, 2007. The investigation revealed that Mr. Kramer,  
11 allegedly continued to pursue and harass an ex-girlfriend after they  
12 broke up.
- 13 ▪ Mr. Kramer was investigated in relation to a fight at local bar in  
14 Phoenix, Arizona on or around March 18, 2009. The investigation  
15 revealed that Mr. Kramer was allegedly intoxicated and involved in a  
16 fight inside the bar.
- 17 ▪ Mr. Kramer was investigated in relation to a fight at a local bar in  
18 Phoenix, Arizona on or around March 25, 2009. The investigation  
19 revealed that Mr. Kramer was allegedly harassing patrons at a local  
20 Phoenix bar and provoked a fight with a male patron. The  
21 investigation also showed that Mr. Kramer frequented the bar on a  
22 regular basis, and was known to aggressively harass bar patrons.
- 23 ▪ Mr. Kramer was investigated for allegedly assaulting nightclub  
24 employees on or around August 22, 2010. According to the police  
25 report, Mr. Kramer claimed that he had paid \$15,000 for a  
26 Thermolife endorsement to be displayed on a VIP booth at the Phase  
27 54 nightclub, which constituted an advertisement, (i.e., not ownership  
28 of the booth). Mr. Kramer came into the nightclub and became angry  
when he saw a bar patron sitting in the VIP booth which displayed  
the Thermolife advertisement. Mr. Kramer allegedly assaulted two  
bar employees when they attempted to explain the booth seating and

1 usage arrangement to Mr. Kramer.

2

3

4

5

- The Drug Enforcement Administration served a search warrant on  
Mr. Kramer's Phoenix residence on or around August 26, 2009,  
seeking evidence pertaining to trafficking of controlled substances  
(steroids).

6 Mr. Kramer's propensity for violence and threats of violence is a central  
7 means by which Thermolife conducts business and deals with competitors. In light of  
8 Thermolife's inability to compete with GNI and other leading manufacturers in the sports  
9 supplement industry, Mr. Kramer routinely resorts to violence and/or threats of violence  
10 against officers and employees of competitors and alludes to his history of violence in an  
effort to intimidate and harass Thermolife's competitors. In fact, in the 12 months leading  
11 up to the 2009 Mr. Olympia, Mr. Kramer directly threatened Mr. Gaspari, GNI  
12 employees, and their families with serious physical injury and death. See Emails and  
13 Postings By Mr. Kramer attached as **Exhibit 1**. It was Mr. Kramer's threats of violence  
14 and the concern for the safety and well being of GNI personnel, their family members and  
15 invitees that prompted the call to American Media of which Thermolife now complains.<sup>1</sup>

16 100. Denies the allegations of paragraph 128 of the FAC.

17 101. Answering paragraph 129 of the FAC, denies it made "threats" to  
18 pull its advertising, admits it put American Media, Inc. on notice Defendant would not  
19 advertise through Media at any American Media event in which ThermoLife participated,  
20 denies all other allegations in the paragraph, and denies it is liable to Plaintiff on any  
basis.

22 <sup>1</sup> Mr. Kramer, who has not had any personal success in the competitive professional  
23 bodybuilding world, has also resorted to ad hominem attacks on Mr. Gaspari—an  
International Bodybuilding Federation Hall of Fame member—and corruptions of his  
24 surname in an apparent attempt to embarrass Mr. Gaspari before members of the  
bodybuilding and sports supplement community. In fact, Mr. Kramer attempted to  
25 personally serve Mr. Gaspari with this lawsuit by bringing a camera crew to Mr. Gaspari's  
induction into the Muscle Beach Hall of Fame, and proceeded to publicly berate him, call  
26 him names, and generally attempt to provoke Mr. Gaspari. See  
<http://www.youtube.com/watch?v=3UMeu3eZhjE>. Mr. Kramer's attempt to provoke Mr.  
27 Gaspari was unsuccessful and his effort to embarrass Mr. Gaspari resulted in Mr. Kramer  
28 being ridiculed on the body building forums for his sophomoric antics.

1           102. Answering paragraph 130 of the FAC, denies it made threats or acted  
 2 improperly, states that it is without knowledge or information sufficient to form a belief as  
 3 to what American Media informed ThermoLife and therefore denies same.

4           103. Answering paragraph 131 of the FAC, states it is without knowledge  
 5 or information sufficient to form a belief as to the arrangements it made to attend the  
 6 Olympia Weekend Expo and therefore denies same, denies that its actions were improper,  
 7 denies all other allegations in the paragraph, and denies it is liable to Plaintiffs on any  
 basis.

8           104. Answering paragraph 132 of the FAC, notes that claims concerning  
 9 ThermoLife's supposed loss of business opportunities at the Mr. Olympia have been  
 10 dismissed by the Court on May 16, 2012 (Court Document No. 46), and therefore,  
 11 Defendant need not respond to this paragraph.

12           105. Denies the allegations of paragraph 133 of the FAC, and  
 13 affirmatively asserts that its actions in conjunction with the Mr. Olympia were in response  
 14 to credible threats against Defendant, its employees, and agents by a convicted felon with  
 15 a history of violent and unpredictable behavior.

16           **FIRST CLAIM FOR RELIEF**

17           **(False Advertising Under 15 U.S.C. § 1125(a)(1)(B))**

18           106. Answering paragraph 134 of the FAC, restates and incorporates here  
 19 by reference paragraphs 1 through 105 of its Answer, above.

20           107. Denies the allegations of paragraph 135 of the FAC.

21           108. Admits the allegations of paragraph 136 of the FAC.

22           109. Answering paragraph 137 of the FAC, states that Mr. Gaspari  
 23 responded to the ban, denies his statements were false, states that Mr. Gaspari's  
 24 statements speak for themselves, denies any characterization of the statements which is  
 25 inconsistent with the statements themselves, denies all other allegations in the paragraph,  
 and denies it is liable to Plaintiff on any basis.

26           110. Admits the allegations of paragraph 138 of the FAC.

27           111. Answering paragraph 139 of the FAC, denies it made false  
 28 assertions, states that the internet commercial speaks for itself, denies any characterization

of the internet commercial that is inconsistent with the internet commercial itself, denies all other allegations in the paragraph, and denies it is liable to Plaintiff on any basis.

112. Answering paragraph 140 of the FAC, denies it uses banned and/or illegal substances in its products, states that the Washington Post article and tests performed speak for themselves, denies any characterization of the article and tests which are inconsistent with the article or tests themselves, reserves the right to challenge conclusions reached by the article and/or tests, as may be relevant in this matter, denies all other allegations in the paragraph, and denies it is liable to Plaintiff on any basis.

113. Denies the allegations of paragraphs 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, and 153 of the FAC.

## **SECOND CLAIM FOR RELIEF**

(False Advertising Under 15 U.S.C. § 1125(a)(1)(B))

114. Answering paragraph 154 of the FAC, restates and incorporates here by reference paragraphs 1 through 113 of its Answer, above.

115. Denies the allegations of paragraph 155 of the FAC.

116. Answering paragraph 156 of the FAC, states that its statements speak for themselves, denies that the statements were false and/or misleading to consumers, denies any characterization of its statements which are inconsistent with its statements themselves, denies all other allegations in the paragraph, and denies it is liable to Plaintiff on any basis.

117. Answering paragraph 157 of the FAC, states that Mr. Pierce's statement speaks for itself, denies that the statement was false and/or misleading to consumers, denies any characterization of the statement which is inconsistent with the statement itself, denies all other allegations in the paragraph, and denies it is liable to Plaintiff on any basis.

118. Answering paragraph 158 of the FAC, states that Mr. Pierce's statement speaks for itself, denies that the statement was false and/or misleading to consumers, denies any characterization of the statement which is inconsistent with the statement itself, denies all other allegations in the paragraph, and denies it is liable to Plaintiff on any basis.

1           119. Answering paragraph 159 of the FAC, states that Mr. Pierce's  
2 statement speaks for itself, denies that the statement was false and/or misleading to  
3 consumers, denies any characterization of the statement which is inconsistent with the  
4 statement itself, denies all other allegations in the paragraph, and denies it is liable to  
5 Plaintiff on any basis.

6           120. Answering paragraph 160 of the FAC, states that Mr. Pierce's  
7 statement speaks for itself, denies that the statement was false and/or misleading to  
8 consumers, denies any characterization of the statement which is inconsistent with the  
9 statement itself, denies all other allegations in the paragraph, and denies it is liable to  
10 Plaintiff on any basis.

11           121. Answering paragraph 161 of the FAC, states that "Zachattack43"'s  
12 statement speaks for itself, denies that the statement was false and/or misleading to  
13 consumers, denies any characterization of the statement which is inconsistent with the  
14 statement itself, denies all other allegations in the paragraph, and denies it is liable to  
15 Plaintiff on any basis.

16           122. Answering paragraph 162 of the FAC, states that user98511001541's  
17 posting speaks for itself, denies that the statement was false and/or misleading to  
18 consumers, denies any characterization of the statement which is inconsistent with the  
19 statement itself, denies all other allegations in the paragraph, and denies it is liable to  
20 Plaintiff on any basis.

21           123. Answering paragraph 163 of the FAC, states that "Iceman's" posting  
22 speaks for itself, denies that the statement was false and/or misleading to consumers,  
23 denies any characterization of the statement which is inconsistent with the statement itself,  
24 denies all other allegations in the paragraph, and denies it is liable to Plaintiff on any  
25 basis.

26           124. Answering paragraph 164 of the FAC, denies any and all allegations  
27 that it made false statements, denies all other allegations in the paragraph, and denies it is  
28 liable to Plaintiff on any basis

29           125. Answering paragraph 165 of the FAC, admits that Novedex XT was  
30 sold at GNC and The Vitamin Shoppe, denies all other allegations in the paragraph, and

1 denies it is liable to Plaintiff on any basis.

2 126. Answering paragraph 166 of the FAC, states that any statements  
 3 made by GNI concerning the DSHEA-compliance status of Novadex XT speaks for  
 4 themselves, denies any characterization of statements which are inconsistent with the  
 5 statements themselves, is without knowledge or information sufficient to form a belief as  
 6 to whether a substantial portion of dietary supplement consumer make purchase decisions  
 7 based upon DSHEA compliance and therefore denies same, denies all other allegations in  
 8 the paragraph, and denies it is liable to Plaintiff on any basis.

9 127. Answering paragraph 167 of the FAC, states that any statements  
 10 made by GNI concerning the DSHEA-compliance status of Novadex XT speaks for  
 11 themselves, denies any characterization of statements which are inconsistent with the  
 12 statements themselves, denies all other allegations in the paragraph, and denies it is liable  
 13 to Plaintiff on any basis.

14 128. Answering paragraph 168 of the FAC, states that the FDA's office  
 15 action is a document that speaks for itself, denies any characterization of the office action  
 16 which is inconsistent with the office action itself, denies all other allegations in the  
 17 paragraph, and denies it is liable to Plaintiff on any basis.

18 129. Denies the allegations of paragraphs 169, 170, 171, 172, 173, 174,  
 19 175, 176, 177, 178 and 179 of the FAC.

**THIRD CLAIM FOR RELIEF**

20 (False Advertising under 15 U.S.C. § 1125(a)(1)(B))

21 130. Answering paragraph 180 of the FAC, restates and incorporates here  
 22 by reference paragraphs 1 through 129 of its Answer, above.

23 131. Answering paragraph 181 of the FAC, states that GNI's advertising  
 24 speaks for itself, denies any characterization of GNI's advertising which is inconsistent  
 25 with the advertising itself, denies any allegations that GNI made false statements in  
 26 conjunction with its advertising, denies all other allegations in the paragraph, and denies it  
 27 is liable to Plaintiff on any basis.

28 132. Answering paragraph 182 of the FAC, states that GNI's advertising  
 29 speaks for itself, denies any characterization of GNI's advertising which is inconsistent

1 with the advertising itself, denies any allegations that GNI made false statements in  
2 conjunction with its advertising, denies all other allegations in the paragraph, and denies it  
3 is liable to Plaintiff on any basis.

4 133. Answering paragraph 183 of the FAC, states that GNI's advertising  
5 speaks for itself, denies any characterization of GNI's advertising which is inconsistent  
6 with the advertising itself, denies any allegations that GNI made false statements in  
7 conjunction with its advertising, denies all other allegations in the paragraph, and denies it  
8 is liable to Plaintiff on any basis.

9 134. Answering paragraph 184 of the FAC, states that the label on  
10 Novedex XT speaks for itself, denies any characterization of the label which is  
11 inconsistent with the label itself, denies any allegations that GNI made false statements in  
12 conjunction with its labeling, denies all other allegations in the paragraph, and denies it is  
13 liable to Plaintiff on any basis.

14 135. Answering paragraph 185 of the FAC, states that GNI's advertising  
15 speaks for itself, denies any characterization of GNI's advertising which is inconsistent  
16 with the advertising itself, denies any allegations that GNI made false statements in  
17 conjunction with its advertising, denies all other allegations in the paragraph, and denies it  
18 is liable to Plaintiff on any basis.

19 136. Answering paragraph 186 of the FAC, states that GNI's advertising  
20 speaks for itself, denies any characterization of GNI's advertising which is inconsistent  
21 with the advertising itself, denies any allegations that GNI made false statements in  
22 conjunction with its advertising, denies all other allegations in the paragraph, and denies it  
23 is liable to Plaintiff on any basis.

24 137. Answering paragraph 187 of the FAC, states that GNI's advertising  
25 speaks for itself, denies any characterization of GNI's advertising which is inconsistent  
26 with the advertising itself, denies any allegations that GNI made false statements in  
27 conjunction with its advertising, denies all other allegations in the paragraph, and denies it  
28 is liable to Plaintiff on any basis.

138. Answering paragraph 188 of the FAC, denies that Bruce Kneller is  
currently GNI's formulator, states that the posting on BodyBuilding.com is a posting that

1 speaks for itself, denies any characterization of the posting that is inconsistent with the  
2 posting itself, denies any and all allegations that any statements by Mr. Kneller are “false  
3 and/or misleading to consumers,” denies all other allegations in the paragraph, and denies  
4 it is liable to Plaintiff on any basis.

5                   139. Answering paragraph 189 of the FAC, states that GNI's statements  
6 concerning Novedex XT speak for themselves, denies any characterization of the  
7 statements which are inconsistent with the statements themselves, denies any allegations  
8 that GNI made false statements, denies all other allegations in the paragraph, and denies it  
is liable to Plaintiff on any basis.

10 140. Denies the allegations of paragraphs 190, 191, 192, 193, 194, 195,  
196, 197, 198, and 199 of the FAC.

## **FOURTH CLAIM FOR RELIEF**

(False Advertising under 15 U.S.C. § 1125(a)(1)(B))

13                   141. Answering paragraph 200 of the FAC, restates and incorporates here  
14 by reference paragraphs 1 through 140 of its Answer, above.

142. Answering paragraph 201 of the FAC, states that GNI's advertising  
speaks for itself, denies any characterization of GNI's advertising which is inconsistent  
with the advertising itself, denies any allegations that GNI made false statements in  
conjunction with its advertising, denies all other allegations in the paragraph, and denies it  
is liable to Plaintiff on any basis.

144. Answering paragraph 203 of the FAC, states that the label on  
Novedex XT speaks for itself, denies any characterization of the label which is  
inconsistent with the label itself, denies any allegations that GNI made false statements in  
conjunction with its labeling, denies all other allegations in the paragraph, and denies it is

1 liable to Plaintiff on any basis.

2 145. Answering paragraph 204 of the FAC, states that GNI's advertising  
3 speaks for itself, denies any characterization of GNI's advertising which is inconsistent  
4 with the advertising itself, denies any allegations that GNI made false statements in  
5 conjunction with its advertising, denies any allegation that calls into question the safety of  
6 GNI's products, denies all other allegations in the paragraph, and denies it is liable to  
7 Plaintiff on any basis.

8 146. Answering paragraph 205 of the FAC, states that GNI's advertising  
9 and the FDA's conclusions are documents that speak for themselves, denies any  
10 characterization of those documents which are inconsistent with the documents  
11 themselves, denies any allegations that GNI made false statements in conjunction with its  
12 advertising, denies all other allegations in the paragraph, and denies it is liable to Plaintiff  
13 on any basis.

14 147. Answering paragraph 206 of the FAC, states that the posting speaks  
15 for itself, denies any characterization of the posting that is inconsistent with the posting  
16 itself, denies any and all allegations that any statements by user98511001541 are "false  
17 and/or misleading to consumers," denies any allegation that calls into question the safety  
18 of GNI's products, denies all other allegations in the paragraph, and denies it is liable to  
19 Plaintiff on any basis.

20 148. Answering paragraph 207 of the FAC, states that the posting speaks  
21 for itself, denies any characterization of the posting that is inconsistent with the posting  
22 itself, denies any and all allegations that any statements by "Iceman" are "false and/or  
23 misleading to consumers," denies any allegation that calls into question the safety of  
24 GNI's products, denies all other allegations in the paragraph, and denies it is liable to  
25 Plaintiff on any basis.

26 149. Answering paragraph 208 of the FAC, states that Mr. Gaspari's  
27 statement speaks for itself, denies any characterization of his statement which is  
28 inconsistent with the statement itself, denies any allegation that calls into question the  
safety of GNI's products, denies all other allegations in the paragraph, and denies it is  
liable to Plaintiff on any basis.

150. Denies the allegations of paragraphs 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, and 219 of the FAC.

## **FIFTH CLAIM FOR RELIEF**

(False Advertising under 15 U.S.C. § 1125(a)(1)(B))

151. Answering paragraph 220 of the FAC, restates and incorporates here by reference paragraphs 1 through 150 of its Answer, above.

152. Answering paragraph 221 of the FAC, states that its advertisements speak for themselves, denies any characterization of its advertisements which is inconsistent with the advertisements themselves, denies all other allegations in the paragraph, and denies it is liable to Plaintiff on any basis.

153. Answering paragraph 222 of the FAC, states that the posting speaks for itself, denies any characterization of the posting that is inconsistent with the posting itself, denies all other allegations in the paragraph, and denies it is liable to Plaintiff on any basis.

154. Answering paragraph 223 of the FAC, denies it made false statements about its products, denies all other allegations in the paragraph, and denies it is liable to Plaintiff on any basis.

155. Answering paragraph 224 of the FAC, admits Halodrol Liquigels and Halodrol MT were sold at GNC and The Vitamin Shoppe, affirmatively states Defendant's products are legal dietary supplements, denies all other allegations in the paragraph, and denies it is liable to Plaintiff on any basis.

156. Answering paragraph 225 of the FAC, states that the statements referenced in the paragraph speak for themselves, denies any characterization of the statements which are inconsistent with the statements themselves, denies all other allegations in the paragraph, and denies it is liable to Plaintiff on any basis.

157. Answering paragraph 226 of the FAC, admits that the FDA issued a formal enforcement report, states that the enforcement report is a document that speaks for itself, denies any characterization of the enforcement report which is inconsistent with the report itself, denies all other allegations in the paragraph, and denies it is liable to Plaintiff on any basis.

158. Answering paragraph 227 of the FAC, states that the enforcement report is a document that speaks for itself, denies any characterization of the enforcement report which is inconsistent with the report itself, denies all other allegations in the paragraph, and denies it is liable to Plaintiff on any basis.

159. Answering paragraph 228 of the FAC, admits that, upon information and belief, MuscleMaster.com conducted a voluntary recall of Halodrol Liquigels, states that the recall notice is a document that speaks for itself, denies any characterization of the recall notice which is inconsistent with the recall notice itself, denies all other allegations in the paragraph, and denies it is liable to Plaintiff on any basis.

160. Denies the allegations of paragraphs 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, and 239 of the FAC.

## **SIXTH CLAIM FOR RELIEF**

(False Advertising under 15 U.S.C. § 1125(a)(1)(B))

161. Answering paragraph 240 of the FAC, restates and incorporates here by reference paragraphs 1 through 160 of its Answer, above.

162. Answering paragraph 241 of the FAC, admits that GNI has advertised its Halodrol Liquigels and Halodrol MT as safe products, affirmatively states that its products are safe, denies all other allegations in the paragraph, and denies it is liable to Plaintiff on any basis.

163. Answering paragraph 242 of the FAC, state that the statement by Mr. Gaspari is a statement that speaks for itself, denies any characterization of the statement which is consistent with the statement itself, denies any allegation that calls into question the safety of GNI's products, denies all other allegations in the paragraph, and denies it is liable to Plaintiff on any basis.

164. Denies the allegations of paragraphs 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, and 253, and specifically denies any allegation that calls into question the safety of GNI's products.

## SEVENTH CLAIM FOR RELIEF

(False Advertising under 15 U.S.C. § 1125(a)(1)(B))

165. Answering paragraph 254 of the FAC, restates and incorporates here

1 by reference paragraphs 1 through 164 of its Answer, above.

2 166. Answering paragraph 255 of the FAC, states that GNI's advertising  
 3 speaks for itself, denies any characterization of its advertising which is inconsistent with  
 4 the advertising itself, denies all other allegations in the paragraph, and denies it is liable  
 5 to Plaintiff on any basis.

6 167. Answering paragraphs 256, 257, 258, 259, 260, and 261 of the FAC,  
 7 states that it is without knowledge or information sufficient to form a belief as to the  
 8 allegations set forth in those paragraphs, and therefore, denies same.

9 168. Answering paragraph 262 of the FAC, admits that ThermoLife  
 10 published information on the Internet, denies that the publication of information was for  
 11 the purpose of promoting awareness, affirmatively asserts that the purpose of  
 12 ThermoLife's publication of information was blatant self-promotion, denies all other  
 13 allegations in the paragraph, and denies it is liable to Plaintiff on any basis.

14 169. Answering paragraph 263 of the FAC, admits that GNI was aware  
 15 that ThermoLife published information on the internet of ChromaDex's testing, states that  
 16 the information produced by ChromaDex speaks for itself, denies any characterization of  
 17 the information which is inconsistent with the information itself, reserves all rights to  
 18 challenge the authenticity, accuracy, and relevance of the information presented by  
 19 Plaintiff in relation to the ChromaDex information, denies all other allegations in the  
 20 paragraph, and denies it is liable to Plaintiff on any basis.

21 170. Denies the allegations of paragraphs 264, 265, 266, 267, 268, 269,  
 22 270, 271, and 272 of the FAC.

23 **EIGHT (SIC) CLAIM FOR RELIEF**

24 (False Advertising under 15 U.S.C. § 1125(a)(1)(B))

25 171. Answering paragraph 273 of the FAC, restates and incorporates here  
 26 by reference paragraphs 1 through 170 of its Answer, above.

27 172. Answering paragraph 274 of the FAC, states that GNI's advertising  
 28 speaks for itself, denies any characterization of the advertising which is inconsistent with  
 the advertising itself, denies all other allegations in the paragraph, and denies it is liable to  
 Plaintiffs on any basis.

1           173. Answering paragraph 275 of the FAC, states that GNI's advertising  
 2 speaks for itself, denies any characterization of the advertising which is inconsistent with  
 3 the advertising itself, denies all other allegations in the paragraph, and denies it is liable to  
 4 Plaintiffs on any basis.

5           174. Denies the allegations of paragraph 276 of the FAC.

6           175. Answering paragraphs 277 and 278 of the FAC, states it is without  
 7 knowledge or information sufficient to form a belief as to the allegations in the paragraph,  
 8 and therefore, denies same.

9           176. Answering paragraph 279 of the FAC, states it is without knowledge  
 10 or information sufficient to form a belief as to the allegations concerning what is or is not  
 11 surprising to Plaintiff and therefore denies same, denies that ThermoLife is a market  
 12 leader in anything, let alone in the sales of Turkesterone, is without knowledge or  
 13 information sufficient to form a belief as to whether ThermoLife has an exclusive  
 14 distributor agreement or whether only one company is known to produce a useable  
 15 amount of Turkesterone for use in dietary supplements and therefore denies same, denies  
 16 all other allegations in the paragraph, and denies it is liable to Plaintiff on any basis.

17           177. Answering paragraph 280 of the FAC, states it is without knowledge  
 18 or information sufficient to form a belief as to the allegations in this paragraph, and  
 19 therefore, denies same.

20           178. Answering paragraph 281 of the FAC, states GNI's advertisements  
 21 speak for themselves, denies any characterization of its advertisements which are  
 22 inconsistent with the advertisements themselves, denies all other allegations in the  
 23 paragraph, and denies it is liable to Plaintiff on any basis.

24           179. Denies the allegations of paragraph 282, 283, 284, 285, 286, 287,  
 25 288, and 289 of the FAC.

26           **NINTH CLAIM FOR RELIEF**

27           (False Advertising under 15 U.S.C. § 1125(a)(1)(B))

28           180. Answering paragraph 290 of the FAC, restates and incorporates here  
 29 by reference paragraphs 1 through 179 of its Answer, above.

30           181. Denies the allegations of paragraph 291 of the FAC.

1           182. Answering paragraph 292 of the FAC, states that it is without  
 2 knowledge or information sufficient to form a belief as to what ThermoLife believes and  
 3 therefore denies same, denies the allegation that SuperPump 250 does not contain  
 4 Turkesterone, denies the allegation that there "is simply not a testable amount,"  
 5 affirmatively states that ThermoLife's testing did not detect it, denies all other allegations  
 6 in the paragraph, and denies it is liable to Plaintiff on any basis.

7           183. Denies the allegations of paragraph 293 of the FAC.

8           184. Answering paragraph 294 of the FAC, states that the marketing video  
 9 is a video that speaks for itself, denies any characterization of the video which conflicts  
 10 with the video itself, admits the video was uploaded to YouTube.com on or around  
 11 October 9, 2010, denies all other allegations in the paragraph, and denies it is liable to  
 Plaintiff on any basis.

12           185. Denies the allegations of paragraphs 295, 296, 297, 298, 299, 300,  
 13 301, 302, 303, 304, and 305 of the FAC.

14           **TENTH CLAIM FOR RELIEF**

15           (Common Law Unfair Competition)

16           186. Answering paragraph 306 of the FAC, restates and incorporates here  
 17 by reference paragraphs 1 through 185 of its Answer, above.

18           187. Denies the allegations of paragraph 307, 308, 309, 310, 311, and 312.  
 19 To the extent that these paragraphs attempt to state a claim concerning ThermoLife's  
 20 supposed lost business opportunities at the Mr. Olympia, those claims have been  
 21 dismissed by the Court on May 16, 2012 (Court Document No. 46), and therefore,  
 22 Defendant need not respond.

23           **ELEVENTH CLAIM FOR RELIEF**

24           (Tortious Interference With Business and Business Expectancy)

25           188. Answering paragraph 313 of the FAC, restates and incorporates here  
 26 by reference paragraphs 1 through 187 of its Answer, above.

27           189. Admits the allegations of paragraphs 314 and 315 of the FAC.

28           190. Answering paragraph 316 of the FAC, notes that claims concerning  
 ThermoLife's supposed anticipated sales at the Mr. Olympia have been dismissed by the

1 Court on May 16, 2012 (Court Document No. 46), and therefore, Defendant need not  
 2 respond to this paragraph.

3           191. Admit the allegations of paragraph 317 of the FAC.

4           192. Answering paragraph 318 of the FAC, states that it is without  
 5 knowledge or information sufficient to form a belief as to the extent of ThermoLife's  
 6 efforts to secure attendance at the Mr. Olympia event and therefore denies same.

7           193. Answering paragraph 319 of the FAC, admits that GNI contacted  
 8 American Media, Inc., denies this was motivated by ill-will and spite, affirmatively states  
 9 that the founder of ThermoLife, Ron Kramer, is a convicted felon with an extensive  
 10 criminal history including convictions for violent offenses and drug offenses. See  
 Criminal Background for Ron Kramer, **Exhibit 1**.

11           194. Denies the allegations of paragraph 320 of the FAC.

12           195. Answering the allegations of paragraph 321 of the FAC, denies  
 13 Defendant "threatened" American Media, Inc., admits the remainder of the allegations in  
 14 paragraph.

15           196. Answering paragraph 322 of the FAC, denies it made threats or acted  
 16 improperly, states that it is without knowledge or information sufficient to form a belief as  
 17 to what American Media informed ThermoLife, and therefore denies same.

18           197. Answering paragraph 323 of the FAC, states it is without knowledge  
 19 or information sufficient to form a belief as to the arrangements ThermoLife made to  
 20 attend the Olympia Weekend Expo, denies that its actions were improper, denies all other  
 21 allegations in the paragraph and therefore denies same, and denies it is liable to Plaintiff  
 22 on any basis.

23           198. Answering paragraphs 324, 325, 326, 327, and 328 of the FAC, notes  
 24 that claims concerning ThermoLife's supposed loss of business opportunities at the Mr.  
 25 Olympia have been dismissed by the Court on May 16, 2012 (Court Document No. 46),  
 26 and therefore, Defendant need not respond to this paragraph, and therefore, denies same.

27           **AFFIRMATIVE DEFENSES**

28           199. Defendant restates and incorporates here by reference paragraphs 1  
 through 198 of its Answer, above.

1           200. Alleges that the doctrine of estoppel bars the FAC in whole or in part.  
 2           201. Alleges that the doctrine of laches bars the FAC in whole or in part.  
 3           202. Alleges that expiration of the statute of limitations bars the FAC in  
 4 whole or in part.

5           203. Alleges that dismissal of claims by the Court (*i.e.*, law of the case)  
 6 bars the FAC in part.

7           204. Alleges that the doctrine of unclean hands bars the FAC in whole or  
 8 in part.

9           205. Alleges that the FAC fails in whole or in part to state a claim upon  
 10 which relief can be granted.

11           206. Alleges that Plaintiff has failed to make reasonable and diligent  
 12 efforts to mitigate its claimed damages.

13           207. Defendant reserves the right to amend its Answer to include such  
 14 affirmative defenses as may arise during the course of discovery in this matter.

#### **COUNTERCLAIM**

15           Counterclaimant Gaspari Nutrition, Inc. (“GNI” or “Counterclaimant”), for  
 16 its Counterclaims against Defendants ThermoLife International, LLC (“ThermoLife” or  
 17 “Counterdefendant”), states and alleges as follows:

#### **THE PARTIES**

18           1. Counterclaimant GNI, Inc. is a corporation organized and existing  
 19 under the laws of the state of New Jersey.

20           2. Upon information and belief, Counterdefendant ThermoLife  
 21 International, LLC is a limited liability company organized and existing under the laws of  
 22 the State of Arizona.

#### **JURISDICTION AND VENUE**

23           3. This Counterclaim arises under the Trademark Act of 1946, 15  
 24 U.S.C. §§ 1051 *et seq.*, as amended (the “Lanham Act”), and the laws of the State of  
 25 Arizona. Thermolife has engaged in unfair competition and has made false and/or  
 26 misleading representations in advertising in violation of the federal Lanham Act and the  
 27 Arizona common law.

4. This Court has subject matter jurisdiction under 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331 (federal question) and 1338 (unfair competition), and supplemental jurisdiction over the state law claims under 28 U.S.C. § 1337.

5. Upon information and belief, jurisdiction in this Court is proper because Counterdefendant does business in and has a principal place of business in this District and/or is subject to personal jurisdiction in this district, and because its acts within this district have given rise to the claims brought herein.

6. Venue is proper in this district under 28 U.S.C. § 1391(b) and (c) because Thermolife conducts substantial business in this District and resides in this District.

## BACKGROUND

## GNI's Success in the Marketplace

7. GNI is a well-known provider of dietary and nutritional supplements.

8. GNI's founder, Rich Gaspari, is one of the most famous bodybuilders of all time and a 2004 inductee into the International Federation of Bodybuilding & Fitness Hall of Fame.

9. GNI has engaged in continuous use of the GASPARI NUTRITION® mark in U.S. commerce since at least as early as March 1, 2000.

10. Gaspari Nutrition owns U.S. Trademark Registration Nos. 2,989,635 and 4,040,735 for the mark GASPARI NUTRITION®. Those trademark registrations are presently valid and subsisting.

11. GNI also owns and uses additional trademarks on its specific products, including but not limited to the marks SIZEON®, SUPERPUMP®, ANAVITE®, MYOFUSION®, REAL MASS®, ANATROPINT™, VASOTROPIN™, INTRAPRO®, AMINOMAX 8000™, and VIRIDEX®.

12. GNI's products have been very successful in the dietary and nutritional supplement industry. Upon information and belief, the leading online retailer of dietary and nutritional supplements for bodybuilders and weightlifters is bodybuilding.com. Each year, bodybuilding.com announces the nominees for its annual

1 Supplement Awards. In 2011, GNI was nominated for fourteen Supplement Awards,  
2 namely:

- 3 • Supplement of the Year: SuperPump MAX; MyoFusion (2  
4 nominations)
- 5 • New Supplement: SuperPump MAX
- 6 • Brand Nominees: Gaspari Nutrition
- 7 • Muscle Building Supplement: SuperPump MAX
- 8 • Pre-Workout: SuperPump250
- 9 • Intra-Workout: SizeOn
- 10 • Recovery: AminoMax 8000
- 11 • Protein Powder: MyoFusion
- 12 • Weight Gainer: REAL MASS
- 13 • Creatine: SizeOn Maximum Performance
- 14 • Branched Chain Amino Acid: AminoMax 8000
- 15 • MultiVitamin: Anavite
- 16 • Packaging: Gaspari Nutrition

17 A printout from bodybuilding.com's website listing the 2011 Supplement Awards  
nominees is attached hereto as **Exhibit 2**.

18 13. In 2010, GNI was nominated for twenty Supplement Awards,  
19 namely:

- 20 • Supplement of the Year: SuperPump250; MyoFusion (2 nominations)
- 21 • New Supplement: Anavite; SizeOn Maximum Performance (2 nominations)
- 22 • Brand Nominees: Gaspari Nutrition
- 23 • Creatine: SizeOn Maximum Performance
- 24 • Energy Supplement: Mitotropin; SuperPump250 (2 nominations)
- 25 • Fat Loss: Mitotropin; CytoLean (2 nominations)
- 26 • Intra-Workout: SizeOn Maximum Performance
- 27 • MultiVitamin: Anavite
- 28 • Muscle Builders: SuperPump250; SizeOn Maximum Performance (2  
nominations)

- 1        • Nitric Oxide: SuperPump250; PlasmaJet (2 nominations)
- 2        • Pre-Workout: SuperPump250
- 3        • Protein Powder: MyoFusion
- 4        • Weight Gainer: REAL MASS
- 5        • Packaging of the Year: Gaspari Nutrition

6        A printout from bodybuilding.com's website listing the 2010 Supplement Awards  
 7        nominees is attached hereto as **Exhibit 3**.

8        14. Since 2008, GNI has won at least four Supplement Awards, including  
 9        Intra-Workout Supplement of the Year in 2011, Best Creatine Supplement in 2010,  
 10       Breakout Brand of the Year in 2009, and Best Ads in 2008.

11       15. Upon information and belief, GNI and its products have been far  
 12       more successful in the marketplace than ThermoLife and its products.

13       16. Upon information and belief, ThermoLife has never been nominated  
 14       for a Supplement Award.

15       17. Upon information and belief, Mr. Kramer's motivation in filing the  
 16       instant lawsuit against GNI was not to act as an industry watchdog, but for the improper  
 17       purpose of harassing GNI, Mr. Gaspari, GNI's officers and employees, and friends,  
 18       family, and acquaintances of GNI, Mr. Gaspari, and GNI's officers and employees.

19       **Threats and Intimidation By ThermoLife**

20       18. Since at least as early as 2008, Thermolife, through its President and  
 21       CEO, Ron Kramer, has engaged in a campaign calculated to harass GNI personnel and to  
 22       impugn GNI's reputation and good standing among GNI distributors, retailers, and  
 23       consumers of sports supplements.

24       19. In 2008, GNI and ThermoLife both attended the Phoenix Pro show in  
 25       Mesa, Arizona. Mr. Kramer attended with a group of men who were purportedly  
 26       members of a street gang.

27       20. While at the show, Mr. Kramer and his entourage physically  
 28       threatened Mr. Gaspari and other GNI employees.

29       21. These threats were calculated to disrupt GNI's business during the  
 30       show, and part of an ongoing campaign of intimidation.

1           22. The goal of these threatening actions was to intimidate GNI  
 2 employees and their families, and thereby gain a competitive advantage over GNI by  
 3 distracting and upsetting GNI employees and impacting GNI's morale.

4           23. In 2008, Mr. Gaspari and Mr. Kramer communicated by e-mail. Mr.  
 5 Kramer complained about Mr. Pierce's postings on the bodybuilding.com forum and  
 6 asked Mr. Gaspari to fire Mr. Pierce for comments Mr. Pierce made about Superdrol, a  
7 third party manufacturer's product, because Mr. Kramer perceived the comment as an  
 8 effort to "debunk me and Thermolife."

9           24. Mr. Gaspari advised Mr. Kramer that he would speak to Mr. Pierce to  
 10 ensure that he "would not say anything about [ThermoLife] or [its] products. . ." A copy  
 11 of this e-mail correspondence is attached hereto as **Exhibit 4**. Mr. Gaspari went on to say  
 12 that "all this animosity toward Dan is a little bizarre and a bit scary if you ask me. I just  
 13 don't understand why you need him to stop talking about other products on the threads.  
 14 As I said, Dan has agreed to refrain from saying anything about ThermoLife or you  
 15 personally on the boards." Id.

16           25. On October 14, 2008, Mr. Kramer responded, "Fucking bitch ass  
 17 counterfeiting FAGGOT." Id. Again, this was a threatening comment intended to  
 18 intimidate Mr. Gaspari with the hope of gaining a competitive advantage over GNI.

19           26. On October 15, 2008, Mr. Kramer threatened Mr. Gaspari by writing,  
 20 "I will step wherever the fuck I want. Eat a dick you little bitch." Id.

21           27. On October 15, 2008, Mr. Gaspari responded, "We'll see Ron.  
 22 [You're] a failure because of your attitude. Everyone hates you. We'll see what  
 23 happens." Id.

24           28. On October 15, 2008, Mr. Kramer responded, "This from the midget  
 25 court jester with 3 nipples!!! LOL[.] We'll see what happens? I will take that and your  
 26 previous e-mail where you told me I stepped out of line as threats. NOW go fuck yourself  
 27 and DO NOT e-mail me again you little bitch." Id.

28           29. On or around August 18, 2008, Mr. Kramer attempted to blackmail  
 29 Mr. Gaspari by sending test results to Mr. Gaspari purportedly showing that the presence  
 28 of Turkesterone was not detected in GNI's SUPERPUMP 250 product.

1           30. Mr. Kramer said he would not publicize the results if Mr. Gaspari  
 2 agreed to purchase turkesterone from Mr. Kramer.

3           31. This constituted extortion, which is a felony offense. Mr. Kramer  
 4 made these threats in order to reap a benefit from GNI to which he was not entitled. Mr.  
 5 Kramer also made these threats in an attempt to intimidate Mr. Gaspari and GNI.

6           32. Mr. Kramer's attempt to use illegal means is unfair competition  
 7 because Mr. Kramer (and thereby ThermoLife) attempted to gain a profit at the expense of  
 8 GNI through means which are illegal and unreasonable.

9           33. On or about December 30, 2010, Mr. Kramer falsely claimed in an  
 10 Internet message board post published on ThermoLife's website at [www.thermolife.com](http://www.thermolife.com)  
 11 that "Rich Gaspari is a BITCH counterfeiter and a PUNK." A copy of that post is  
 12 attached hereto as **Exhibit 5**.

13           34. This was another attempt by Mr. Kramer to threaten and intimidate  
 14 Mr. Gaspari.

15           **ThermoLife's Publication of False and Deceptive Advertisements Concerning GNI**

16           35. Since 2008, Mr. Kramer, in his capacity as President and CEO of  
 17 Thermolife, has regularly published false and disparaging information about GNI  
 18 products, Mr. Gaspari, other GNI officers and employees, and their friends, family, and  
 19 acquaintances, including Daniel Pierce. Mr. Kramer's false disparaging statements have  
 20 damaged the reputation of GNI, its officers and employees, and GNI's product line.

21           36. Mr. Kramer has published many of his false disparaging statements  
 22 about GNI on the message board forums on his own company's website at  
 23 [www.thermolife.com](http://www.thermolife.com). Mr. Kramer's posts are especially deceptive because he posts false  
 24 information under the screen name "Truth Speaker."

25           37. Mr. Kramer has published false statements that GNI's products,  
 26 including VASOTROPIN, HALODROL, and SUPERPUMP 250, are mislabeled and/or  
 27 underdosed. A copy of a message board post made by Mr. Kramer on or about April 6,  
 28 2012, containing false statements concerning GNI's VASOTROPIN product is attached  
 29 hereto as **Exhibit 6**. Mr. Kramer has published false and/or misleading statements that  
 30 GNI's VASOTROPIN product is ineffective because it purportedly contains less than 1

1 milligram of nitrates per tablet. Id. Mr. Kramer posted this false and/or misleading  
 2 statement in a message board post on ThermoLife's website at [www.thermolife.com](http://www.thermolife.com),  
 3 under the headline, "GASPARI selling SAW DUST???" Id. A copy of message board  
 4 posts made by Mr. Kramer beginning on or about January 27, 2010, containing false  
 5 statements concerning the alleged absence of 95% 3,4-divanillytetrahydrofuran in any  
 6 dietary and nutritional supplements, including GNI's supplements, is attached hereto as  
 7 **Exhibit 7.** Thermolife's postings are false because GNI supplements contain 95% 3,4-  
 8 divanillytetrahydrofuran..

9       38. Mr. Kramer has published false statements that GNI's products,  
 10 including NOVEDEX and HALODROL, were adulterated with illegal steroids. See, e.g.,  
 ¶¶ 64-85, **Exhibit 10.** In fact, GNI has never adulterated its products with illegal steroids.

11       39. Mr. Kramer has published false statements that Rich Gaspari knows  
 12 nothing about dietary and nutritional supplements. See, e.g., ¶ 56, **Exhibit 9.**

13       40. These statements are false. Mr. Gaspari has decades of experience in  
 14 the dietary and nutritional supplement business, and has extensive experience in the  
 15 bodybuilding industry as both a supplement producer and as a bodybuilder.

16       41. By indicating that Mr. Gaspari has no experience in the field,  
 17 ThermoLife has called into question whether Mr. Gaspari is qualified to produce and sell  
 18 supplements.

19       42. This allegation resulted in the diversion of sales from GNI to  
 20 ThermoLife and other supplement companies.

21       43. In or about September 2008, Mr. Kramer published false statements  
 22 on various Internet message boards, including bodybuilding.com, that GNI's  
 23 SUPERPUMP 250 product did not contain the ingredient Turkesterone.

24       44. These statements were false – SUPERPUMP 250 did contain  
 25 Turkesterone. Upon information and belief, ThermoLife made these statements to cause  
 26 consumers to question GNI's formulations, thereby diverting sales to ThermoLife and  
 27 other supplement companies.

1           45. Mr. Kramer's false statements concerning the alleged absence of  
 2 Turkesterone in SUPERPUMP 250 gained significant publicity on Internet message  
 3 boards.

4           46. The statements were so damaging to GNI that Rich Gaspari was  
 5 compelled to respond on an Internet message board hosted at [www.bodybuilding.com](http://www.bodybuilding.com). A  
 6 copy of that message board thread is attached as **Exhibit 8**.

7           47. On or about September 3, 2008, Mr. Kramer said in response to  
 8 Gaspari Nutrition's post, "You posted all that to claim there is 1mg of 2% material in a 20  
 9 gram serving. For anyone who doesn't know that is .02 of 1 milligram of "alleged"  
 10 Turkesterone. If that is all you are claiming it is not even worth my time proving that  
 11 amount is or isn't in there. I doubt .02 milligrams of arsenic could kill a fly!

12           "Just to clarify exactly how much that is, you would have to break 1mg into 100  
 13 separate parts and then take 2 of those parts and that would = how much Turkesterone you  
 14 say is in the product.

15           "There is probably more ink in used in writing - Turkesterone (11,20  
 16 Dihydroxyecdysone From Ajuga Turkestanica Extract) on the label than the .02mg you  
 17 now claim to have in the product. If that is what you want to tell consumers it is not even  
 18 worth me posting anything further." Id. (Post # 76).

19           48. The statements in paragraph 47 are misleading. Upon information  
 20 and belief, by quantifying the amount of Turkesterone in the way ThermoLife did, this  
 21 created a false impression that GNI's product is not effective. Upon information and  
 22 belief, this has resulted in consumers questioning the quality and efficacy of GNI's  
 23 supplements, and has resulted in diversion of sales from GNI to ThermoLife and/or other  
 24 supplement companies.

25           49. On or about September 3, 2008, Mr. Kramer also made additional  
 26 posts on the [bodybuilding.com](http://bodybuilding.com) message boards calling Mr. Gaspari a "counterfeiter," and  
 27 falsely stating that SUPERPUMP 250 is ineffective because it contains a small dose of  
 28 turkesterone. Id. (Post Nos. 160 and 162).

29           50. This statement is false and deceptive. Mr. Gaspari is not a  
 30 counterfeiter and GNI does not sell adulterated or mislabeled/misrepresented goods.

1 Stating and implying that GNI sells counterfeit goods is false and deceptive advertising.  
 2 Upon information and belief, this has resulted in the diversion of sales from GNI to  
 3 ThermoLife and other supplement companies.

4 51. On or about September 23, 2008, Mr. Kramer posted additional false  
 5 statements about Rich Gaspari, Gaspari Nutrition, and Gaspari Nutrition's products on his  
 6 company's message boards at [www.thermolife.com](http://www.thermolife.com). A copy of that post is attached hereto  
 7 as **Exhibit 9**.

8 52. In the September 23, 2008 post, Mr. Kramer falsely claims that  
 9 "Gaspari was a joke in this industry peddling protein from his garage." Id.

10 53. This statement is false. Mr. Gaspari and GNI do not operate from  
 11 Mr. Gaspari's garage. By stating that GNI operates from a garage is false and deceptive..  
 12 This implies that GNI is not a legitimate supplement company. Upon information and  
 13 belief, the statement has resulted in the diversion of sales from GNI to ThermoLife and  
 14 other supplement companies.

15 54. In the September 23, 2008 post, Mr. Kramer falsely claims that "Rich  
 16 [Gaspari] knows nothing about supplements." Id.

17 55. This statement is false. Mr. Gaspari knows a great deal about  
 18 supplements, as evidenced by GNI's impressive array of accolades and market share in  
 19 the supplement industry. See, e.g., First Amended Counterclaims, ¶¶ 7-14 and **Exhibits 2**  
 20 **and 3**. Upon information and belief, falsely stating that the owner of GNI does not have  
 21 knowledge about supplements has resulted in consumers questioning the quality and  
 22 efficacy of GNI's supplements, and has resulted in the diversion of sales from GNI to  
 23 ThermoLife and other supplement companies.

24 56. In the September 23, 2008 post, Mr. Kramer falsely claims that  
 25 Gaspari Nutrition added "EXPIRED INGREDIENTS" to its products. Id.

26 57. This is false. GNI does not use expired ingredients. By stating that  
 27 GNI uses expired ingredients, ThermoLife has improperly called into question the quality  
 28 and efficacy of GNI's products. Upon information and belief, this has resulted in  
 consumers questioning the quality and efficacy of GNI's supplements, and has resulted in  
 the diversion of sales from GNI to ThermoLife and other supplement companies.

1           58. Mr. Kramer has published false statements that no dietary and  
 2 nutritional supplements contain the ingredient 95% 3,4-divanillytetrahydrofuran,  
 3 including GNI's HALODROL product. Mr. Kramer posted these statements in numerous  
 4 message board posts on ThermoLife's website at [www.thermolife.com](http://www.thermolife.com) beginning on  
 5 January 27, 2010. See Exhibit 7.

6           59. This statement is false. Gaspari Nutrition and other producers of  
 7 dietary and nutritional supplements have produced supplements that do contain 95% 3,4-  
 8 divanillytetrahydrofuran. Upon information and belief, this has resulted in consumers  
 9 questioning the quality and efficacy of GNI's supplements, and has resulted in the  
 10 diversion of sales from GNI to ThermoLife and other supplement companies.

11           60. Mr. Kramer has published false and/or misleading statements that  
 12 GNI's VASOTROPIN product is ineffective because it purportedly contains less than 1  
 13 milligram of nitrates per tablet. On or about April 6, 2012, Mr. Kramer posted this false  
 14 and/or misleading statement in a message board post on ThermoLife's website at  
 15 [www.thermolife.com](http://www.thermolife.com), under the headline, "GASPARI selling SAW DUST???" See  
**Exhibit 6.**

16           61. This statement is false. GNI's products do not contain saw dust or  
 17 any equivalent compound. Upon information and belief, by falsely stating that GNI's  
 18 products contain saw dust, and thereby also implying that GNI's products do not contain  
 19 effective ingredients, this has resulted in consumers questioning the quality and efficacy  
 20 of GNI's supplements, and has resulted in the diversion of sales from GNI to ThermoLife  
 21 and other supplement companies.

22           62. Upon information and belief, on or about May 25, 2012, Thermolife  
 23 and/or its agents published a press release concerning this case titled "Federal Judge  
 24 Allows ThermoLife to Take SUPER DUMP on Gaspari." The release was posted on a  
 25 website corresponding to the domain name [www.anthonycroberts.info](http://www.anthonycroberts.info). A copy of the press  
 26 release is attached hereto as **Exhibit 10.**

27           63. The placement of the May 25, 2012 press release on the  
 28 [anthonycroberts.info](http://www.anthonycroberts.info) site, and facts surrounding its appearance on that site demonstrate that

1 Mr. Kramer intended to use the current proceedings in a deceptive fashion to improperly  
2 impugn GNI, its employees, and its products:

3 64. Anthony Roberts is an independent freestyle journalist who covers  
4 the dietary and nutritional supplement industry.

5 65. Mr. Roberts has a good reputation as a journalist in the dietary and  
6 nutritional supplement industry. On information and belief, Mr. Roberts has been quoted  
7 in the New York Times, the New York Daily News, and peer-reviewed medical journals.

8 66. On information and belief, Mr. Roberts once operated a blog using  
9 the www.anthonyrroberts.info domain name.

10 67. On information and belief, Mr. Kramer unsuccessfully attempted to  
11 pay Mr. Roberts to post content on his blog that was favorable to ThermoLife and/or  
12 critical of other dietary and nutritional supplement companies.

13 68. On information and belief, the www.anthonyrroberts.info domain  
14 name was confiscated from Mr. Roberts in connection with a federal lawsuit titled  
15 Dynamic Sports Nutrition v. Anthony Roberts, Civil Action No. H-09-1929, in the  
16 Southern District of Texas.

17 69. On information and belief, the www.anthonyrroberts.info domain  
18 name is now owned by Brian Clapp, a friend of Mr. Kramer. On October 16, 2011, Mr.  
19 Kramer wrote an Internet message board post on ThermoLife's website confirming that  
20 Mr. Clapp owns the www.anthonyrroberts.info domain name. A copy of that message  
21 board post is attached as **Exhibit 11** (see p. 3).

22 70. Mr. Clapp has used Mr. Robert's name and reputation to publish  
23 articles, and upon information and belief, Mr. Kramer has capitalized on this reputation to  
24 file press releases for Mr. Kramer and ThermoLife, in an attempt to give legitimacy to Mr.  
25 Kramer's statements.

26 71. On information and belief, Counterclaim Defendant and/or Mr.  
27 Clapp, acting as Counterclaim Defendant's agent, posted the press release attached as  
28 **Exhibit 10.**

1           72. On or about May 25, 2012, Mr. Kramer posted a link to the Anthony  
 2 Roberts blog and the press release attached as **Exhibit 10** on a message board at  
 3 www.modernfitnessforum.com. A copy of that post is attached as **Exhibit 12**.

4           73. The subject of Mr. Kramer's May 25, 2012 post to  
 5 www.modernfitnessforum.com was, "Anthony Roberts Blog is Alive Again :-)." *Id.* The  
 6 implication, of course, was that Anthony Roberts had resumed posting. Upon information  
 7 and belief, however, Mr. Clapp, someone with no standing in the bodybuilding  
 8 community, was posting at the direction of Mr. Kramer.

9           74. Mr. Kramer's May 25, 2012 post on www.modernfitnessforum.com  
 10 was a blatant, willful attempt to deceive the bodybuilding community as to the authorship,  
 11 authenticity, and veracity of the press release.<sup>2</sup>

12           75. Upon information and belief, Mr. Kramer posted on  
 13 modernfitnessforum.com so that users of that site would click the link leading to the  
 14 anthonyroberts.info site and read the false and deceptive press release, and believe that  
 15 Mr. Roberts was the author of the press release.

16           76. Moreover, the press release is false and/or misleading, and is likely to  
 17 deceive consumers into believing, mistakenly, that the court has ruled against GNI on the  
 18 merits of the case. For example, the press release states that ThermoLife's First Amended  
 19 Complaint "reads like a criminal indictment against Gaspari." That statement is false and  
 20 misleading because it gives consumers the false impression that Mr. Gaspari and GNI are  
 21 facing a criminal indictment.

22           77. The press release also includes improper conclusions about the case  
 23 which do not reflect reality.

24           78. For example, the release says, "Gaspari will now be ordered to turn  
 25 over all documents related to any and all advertising for Halodrol, Novadex, and Super  
 26 Pump 250," that "Gaspari will also be required to produce all documents sent to retailers

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27           26           27           28           29           30  
 28           <sup>2</sup> Mr. Kramer, ThermoLife and its attorneys also attempted to deceive the Court in their  
 29 briefs in support of ThermoLife's motion to dismiss Gaspari Nutrition's counterclaims,  
 30 alleging that the May 25, 2012 press release (or "Blog Post" as they called it), was  
 31 anonymous, when in fact ThermoLife was responsible for the "blog post" and attempted  
 32 to deceive consumers as to the source of the "blog post."

1 such as GNC, Vitamin Shoppe, Bodybuilding.com, etc, claiming Halodrol and Novadex  
 2 [sic] were natural, safe, and DHESA [sic] compliant, contrary to the ruling by the FDA,”  
 3 and that GNI “will now also be required to disclose all gross sales and profit on all sales  
 4 of Halodrol, Novadex and Super Pump 250.”

5       79. These statements are false and/or misleading because they create the  
 6 mistaken impression that GNI has been ordered by the court to produce documents, and/or  
 7 that GNI has been found liable for any of ThermoLife’s claims. Upon information and  
 8 belief, this has led some consumers to believe that GNI’s products were not natural,  
 9 unsafe, and not DSHEA compliant. This has resulted in the diversion of sales from GNI  
 10 to ThermoLife and other supplement companies.

11       80. The press release goes on to misleadingly claim that “[a]ny failure to  
 12 disclose this information could result in contempt sanctions against Gasapari Nutrition  
 13 and criminal charges against Mr. Gaspari personally if his company doesn’t comply with  
 14 the court orders.”

15       81. This statement is misleading because there is no court order, nor have  
 16 there been any contempt sanctions or criminal charges against GNI in this case. Plaintiff  
 17 is wielding the court’s order on GNI’s motion to dismiss the FAC for the improper  
 18 purpose of falsely disparaging the company. Upon information and belief, by implying  
 19 that GNI is avoiding a Court order to disclose information, and by alleging that GNI could  
 20 face contempt proceedings and criminal sanctions, consumers have been misled to believe  
 21 GNI is hiding information about its products. This has resulted in the diversion of sales  
 22 from GNI to ThermoLife and other supplement companies.

23       82. The press release also states, “There seems to be little doubt of these  
 24 facts and the law clearly states that Mr. Gaspari is not entitled to any profit he made from  
 25 selling these products. ThermoLife’s federal law claims also provide that if and when  
 26 Gasapari Nutrition is found liable, the court can award treble damages (that’s three times  
 27 Gasapari Nutrition’s profit earned from all Halodrol, Novadex, and Super Pump 250).”  
 28 These statements are false and/or misleading to the extent they suggest to consumers that  
 GNI has lost the case. Upon information and belief, by implying that Court-ordered  
 disgorgement is all but inevitable, consumers have been misled to believe ThermoLife’s

1 negative claims about GNI's products, and this has resulted in the diversion of sales from  
2 GNI to ThermoLife and other supplement companies.

3           83. The press release further states, "Gaspari Nutrition's recent release of  
4 poorly formulated and pixidusted products that are receiving poor reviews from customers  
5 nationwide. Gasapari Nutrition who used to regularly have several products in the top 10  
6 on the industry's 'top selling list' has plummeted in the rankings. With a company  
7 already in trouble for a host of reasons, a substantial monetary judgment equal to three  
8 times the profit on all Halodrol, Novadex [sic], and SuperPump 250 sold could easily put  
9 Gasapari Nutrition out of business and could bankrupt the former bodybuilder." These  
10 statements are false and misleading. Upon information and belief, this has resulted in  
11 consumers questioning the quality and efficacy of GNI's supplements, and has resulted in  
12 the diversion of sales from GNI to ThermoLife and other supplement companies.

13           84. GNI's products are not "pixidusted," a term which indicates  
14 adulteration or misrepresentation by GNI about the composition of its products. Upon  
15 information and belief, these false statements have resulted in consumers questioning the  
16 quality and efficacy of GNI's supplements, and has resulted in the diversion of sales from  
17 GNI to ThermoLife and other supplement companies.

18           85. Upon information and belief, to the extent GNI's products have  
19 slipped in the sales rankings, such slippage is the direct result of Thermolife's campaign  
20 of false advertising against GNI.

21           86. Thermolife's false statements have harmed GNI in its business and  
22 have harmed GNI's reputation as one of the top distributors of dietary and nutritional  
23 supplements for bodybuilders, weightlifters, and other athletes.

24           87. On or about August 3, 2012, Mr. Kramer posted a message on his  
25 company's Internet message board at [www.thermolife.com](http://www.thermolife.com) that a "New bill could have put  
26 Gayspari in jail for up to 10 years and fined him \$2.5 million for selling the products that  
27 are just part of the subject we are suing him over." A copy of that post is attached hereto  
28 as **Exhibit 13** (see page 9).

88. In fact, this statement is false – the “bill” described by Mr. Kramer would not impose any criminal liability on Mr. Gaspari or GNI, because Mr. Gaspari and GNI did nothing for which criminal liability could be imposed.

89. Even if a bill were passed and under a new law GNI's conduct fell under the bill, the Court could not apply the law ex post facto to any actions undertaken by GNI prior to the passage of the new law. There simply is no way GNI could face civil or criminal liability as described in Mr. Kramer's August 3, 2012 posting.

90. Upon information and belief, this false statement was written for the purpose of branding Mr. Gaspari and GNI as a criminal enterprise. Upon information and belief, this false statement resulted in the diversion of sales from GNI to ThermoLife and other supplement companies.

91. The August 3, 2012 post also states, "Active ingredients found in both Halodrol and Novadex [sic] can be found listed among the 25 'designer steroids' listed in the new bill." Id.

92. This statement is deceptive because it implies that active ingredients found in GNI's products are "designer steroids" or akin to "designer steroids."

93. The statement is also deceptive because “designer” is a term typically used with high-end lab-produced illegal substances.

94. Upon information and belief, ThermoLife used the term “designer” so that consumers would draw a comparison between so-called “designer drugs” and GNI’s products.

95. However, GNI's products are not designer steroids nor akin to designer steroids or illegal substances, and ThermoLife's statement is false. Upon information and belief, by equating GNI's products to illegal steroids and designer drugs, sales were diverted from GNI to ThermoLife and other supplement companies.

## COUNT I

**False Designations of Origin, False Descriptions,  
False Advertising, And Unfair Competition – 15 U.S.C. § 1125(a)**

96. GNI restates and re-alleges each and every preceding paragraph of its Counterclaim as though fully set forth herein.

1           97. Thermolife's publication of false disparaging statements about GNI  
 2 and its products constitutes unfair competition, false advertising, false designation of  
 3 origin, and/or false description under section 43(a) of the Lanham Act, 15 U.S.C.  
 4 § 1125(a).

5           98. Thermolife has made false statements of fact in commercial  
 6 advertisements about the products of GNI.

7           99. ThermoLife has falsely claimed that SUPERPUMP 250 did not  
 8 contain turkesterone. See First Amended Counterclaims ¶¶ 33-38, Ex. 8.

9           100. ThermoLife has falsely claimed that SUPERPUMP 250 is not  
 10 effective. Id.

11           101. ThermoLife has falsely claimed that VASOTROPIN is ineffective  
 12 because it purportedly contains less than 1 milligram of nitrates per tablet. Id., ¶¶ 37, 60-  
 13 61, **Exhibit 6**.

14           102. ThermoLife has falsely claimed that HALODROL is ineffective  
 15 because it did not contain 95% 3,4 divanillytetrahydrofuran. See First Amended  
 16 Counterclaims ¶ 58-59, **Exhibit 7**.

17           103. ThermoLife has falsely claimed that Novedex and Halodrol were  
 18 "spiked" with illegal steroids. See id., ¶¶ 38, 62-84, **Exhibit 10**.

19           104. ThermoLife has falsely claimed that Rich Gaspari "was a joke in the  
 20 industry," that Mr. Gaspari "knows nothing about supplements," that if not for Bruce  
 21 Kneller, Mr. Gaspari "would be a personal trainer at 24 Hour Fitness," and that Mr.  
 22 Gaspari is a "counterfeiter." Id., ¶¶ 54 and 56, **Exhibit 9**.

23           105. ThermoLife has falsely claimed that Gaspari Nutrition uses expired  
 24 ingredients in its products. Id., ¶ 56-57, **Exhibit 9**.

25           106. Thermolife's false statements actually deceived or had the tendency  
 26 to deceive a substantial segment of their audience.

27           107. ThermoLife's statements that SUPERPUMP 250 does not contain  
 28 turkesterone are literally false.

1           108. ThermoLife's statements that SUPERPUMP 250 does not contain an  
 2 effective dose of turkesterone are literally false and/or likely to deceive consumers.  
 3 Gaspari Nutrition's SUPERPUMP 250 product is an effective product.

4           109. ThermoLife's statements that VASOTROPIN is ineffective because it  
 5 contains less than 1 mg of nitrates is literally false and/or likely to deceive consumers.  
 6 Gaspari Nutrition's VASOTROPIN is an effective product.

7           110. ThermoLife's May 25, 2012 press release is literally false and/or  
 8 likely to deceive consumers because it falsely suggests that (a) Gaspari Nutrition has  
 9 already lost the case; (b) that Gaspari Nutrition has committed crimes; and (c) that Gaspari  
 10 Nutrition is facing financial difficulties, all under the false pretense that the release was  
 11 posted by an independent journalist, Anthony Roberts, when in fact it was posted by Brian  
 12 Clapp and ThermoLife.

13           111. Thermolife's deception is material in that it is likely to influence the  
 14 purchasing decision. Specifically, consumers have been deceived by ThermoLife's  
 15 statements. On information and belief, some believe, erroneously, that Gaspari Nutrition's  
 16 products are spiked with illegal steroids, and/or that Gaspari Nutrition's products are  
 17 mislabeled and/or underdosed. On information and belief, some believe, erroneously, that  
 18 Mr. Gaspari is a "counterfeiter," and/or that Mr. Gaspari is not qualified to conduct his  
 19 business, as a result of ThermoLife's false and malicious public statements made in  
 advertising in interstate commerce.

20           112. Thermolife caused the false statements to enter interstate commerce  
 21 by publishing the statements on Internet message boards that are visible to consumers of  
 22 dietary and nutritional supplements throughout the United States and worldwide.

23           113. GNI has incurred financial damage as a result of Thermolife's false  
 24 statements.

25           114. On information and belief, the financial damages suffered by Gaspari  
 26 Nutrition is the diversion of sales to competitors as a result of false statements made by  
 27 ThermoLife. Consumers who relied upon ThermoLife's false and deceptive advertising  
 28 have lost faith in Gaspari Nutrition's products. Upon information and belief, that subset of

1 consumers has purchased products offered by Gaspari Nutrition's competitors, including  
 2 ThermoLife.

3                   115. GNI has also experienced a lessening of the goodwill associated with  
 4 GNI and its products.

5                   116. In an industry in which reputation, word of mouth, and Internet  
 6 advertising and discussion are critical components of a marketing strategy, false  
 7 statements, such as those as by ThermoLife which serve as the basis of this  
 8 counterclaim, are highly detrimental to GNI's sales.

9                   117. Upon information and belief, GNI has suffered damage to the  
 10 goodwill it has cultivated with its customer base, due to ThermoLife's false and deceptive  
 11 advertising.

12                   118. This loss of goodwill has monetary consequences, as some customers  
 13 that would otherwise purchase GNI's products based upon GNI's reputation and record of  
 14 providing quality supplements have not purchased from GNI because of reliance upon  
 15 ThermoLife's false and deceptive statements.

16                   119. ThermoLife's unlawful acts have caused, and will continue to cause,  
 17 irreparable harm to GNI, as described in the preceding paragraphs, unless ThermoLife is  
 enjoined by the Court.

## 18                   COUNT II

### 19                   **Unfair Competition Under Arizona Common Law**

20                   120. GNI restates and re-alleges each and every preceding paragraph of its  
 21 Counterclaim as though fully set forth herein.

22                   121. Thermolife represented that Counterclaimant's products were illegal,  
 23 mislabeled, dangerous, and ineffective without a basis in fact sufficient to validate those  
 24 claims.

25                   122. Thermolife's representations constitute false advertising, which is  
 26 actionable as unfair competition under Arizona common law.

27                   123. Thermolife has engaged in a campaign of threats, violence,  
 28 harassment, and attempts at public humiliation against Counterclaimant, its employees  
 and agents, and friends of family of Counterclaimant, its employees, and agents.

124. Thermolife's actions, referenced in the previous paragraph and described in detail in the Counterclaim, was undertaken to gain a competitive advantage over Gaspari.

125. Use of illegal means, including threats, violence, harassment, attempts at extortion, and attempts at public humiliation, constitutes unfair competition under Arizona common law.

126. By employing these means, Thermolife has acted improperly and illegally, and Thermolife is liable to injuries sustained by Gaspari as a result.

127. By reason of the foregoing acts of Thermolife, Counterclaimant has sustained, and unless enjoined will continue to sustain, substantial injury and damage.

128. Thermolife has unlawfully and wrongfully derived income and profits and has been unjustly enriched as a result of the foregoing acts.

129. Counterclaimant has no adequate remedy at law to fully compensate it for the damage Thermolife's actions have caused and will cause.

### COUNT III

## Trade Disparagement

130. GNI restates and re-alleges each and every preceding paragraph of its Counterclaim as though fully set forth herein.

131. As described more fully above, Thermolife has published a series of statements on its forums, in other electronic body building forums, and in other media, including through press releases indicating Counterclaimant's products are mislabeled, underdosed, adulterated, "poorly formulated", and/or "pixidusted." See First Amended Counterclaims, ¶¶ 37-38, 43-51, 60-84, **Exhibits 6, 8 and 10.**

132. Among other statements, on or around April 7, 2012, Thermolife posted on its forums a statement entitled “GASPARI selling SAW DUST???” See Exhibit 6. The forum posting indicated Counterclaimant “tout the benefits of nitrates and then sell you a product that contains a barley [sic] measurable dose that will certainly have ZERO EFFECT on anyone expecting to get pumped from this dose.” Id.

1           133. Among other statements, on or around May 25, 2012, Thermolife  
 2 published a press release in which Thermolife misrepresented that GNI earned profit by  
 3 “deceiving consumers and selling illegal products” and claimed “the law clearly states Mr.  
 4 Gaspari is not entitled to any profit he made from selling these products.” See Exhibit 10.

5           134. The above statements are false, misleading, defamatory and have  
 6 been made with reckless disregard as to the truth or falsity of those statements.

7           135. Thermolife published such statements to various third parties,  
 8 including members of the bodybuilding community, including through the “forums”  
 9 section of Thermolife’s website, on electronic body building forums, and through press  
 releases.

10           136. Upon information and belief, Thermolife published the statements  
 11 with actual knowledge that the statements were false or with reckless disregard as to their  
 12 truth or falsity. Thermolife knew or should have known that the publication was  
 13 substantially likely to cause Counterclaimant pecuniary injury.

14           137. Thermolife published the statements out of spite, with an evil mind  
 15 and in order to harm Counterclaimant and interfere with Counterclaimant’s customers,  
 16 distributors, vendors, and goodwill in the bodybuilding/nutritional supplement  
 17 community.

18           138. As a result of Thermolife’s publication of the false statements,  
 19 Counterclaimant’s name has been disparaged and its goodwill has been injured.

20           **DEMAND FOR JURY TRIAL**

21           Pursuant to Fed. R. Civ. P. 38, GNI hereby demands a trial by jury as to all  
 22 causes of action so triable.

23           **PRAAYER FOR RELIEF**

24           WHEREFORE, Defendant/Counterclaimant GNI, Inc. requests:

25           1.       This Court grant judgment in its favor on Plaintiff’s claims, with  
 26 prejudice and on the merit, and that Plaintiff take nothing by its First Amended  
 Complaint;

27           2.       This Court grant judgment in favor of Counterclaimant on all counts  
 28 of the Counterclaim;

1           3. This Court enjoin and restrain Thermolife and its agents, servants,  
2 representatives, successors, assigns and all others in active concert or participation with  
3 ThermoLife, during the pendency of this action and thereafter permanently from  
4 committing false advertising, false designation of origin, false descriptions, unfair  
5 competition, and/or any other act or making any other statement that constitutes an act of  
6 false advertising, false designation of origin, false descriptions, and/or unfair competition,  
7 or deceptive trade practices under federal law, common law, or the laws of the State of  
8 Arizona;

9           4. This Court award damages adequate to compensate Counterclaimant  
10 for Thermolife's wrongful acts of unfair competition, unfair or deceptive trade practices,  
11 and trade disparagement in amounts to be determined at trial;

12           5. An accounting by Thermolife of all gains, profits, and advantages  
13 derived from its wrongful acts of unfair competition, unfair or deceptive trade practices,  
14 and trade disparagement;

15           6. Trebling the amount of damages awarded Counterclaimant pursuant  
16 to 15 U.S.C. § 1117;

17           7. Awarding to Counterclaimant reimbursement of its attorneys' fees,  
18 costs and expenses pursuant to 15 U.S.C. § 1117 and A.R.S. § 12-349;

19           8. Awarding to Counterclaimant punitive damages in an amount  
20 sufficient to deter and punish Thermolife;

21           9. Awarding to Counterclaimant pre- and post-judgment interest on any  
22 awards at the highest rate allowed by law;

23           10. Awarding to Counterclaimant the costs of suit incurred herein; and

24           11. Awarding to Counterclaimant such other relief as the Court may  
25 deem just and proper.

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RESPECTFULLY SUBMITTED this 15th day of August, 2012.

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By: /s/*Gregory M. Krakau*

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 15th day of August, 2012, I electronically transmitted a PDF version of this document to the Clerk of the Court, using the CM/ECF System for filing and for transmittal of a Notice of Electronic Filing to all CM/ECF registrants.

/s/ *Gregory M. Krakau*  
Gregory M. Krakau